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STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

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CINDY RAMBO
Executive Director

October 20, 1989

Dear Mr. .

This is in response to your letter of September 25, 1989, requesting advice on the application of Proposition 60.

Your letter states:

Our son gave us a parcel of land under a grant deed in March 1988. We plan to build and pay for a house, pay for a road, water, utilities, etc. Even though the land was a gift, we will be paying for everything except the land, which will be a great deal of 'consideration.' Assuming that we sell our current house prior to March 1990, the new house is appraised at the same or less than the market value of our old house, would there be anything to prevent us from receiving the benefits of Proposition No. 60?

Proposition 60 is implemented by Revenue and Taxation Code section 69.5 which provides, in part, that any person over the age of 55 who resides in property which is eligible for the homeowners exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value which "is purchased or newly constructed by that person" as his or her principal residence within two years of the sale by that person of the original property. (Section 69.5(a)(1).)

Subdivision (b) of section 69.5 lists various conditions which must be satisfied in order to qualify for section 69.5 relief. Paragraph (1) of the subdivision requires that the claimant be an owner and a resident of the original property at the time of its sale or within two years of "the purchase or new construction of the replacement dwelling." Paragraph (2) also requires that the original property be eligible for the homeowners exemption as a result of the claimant's occupancy either at the time of its sale or within two years of "the purchase or new construction of the replacement dwelling." Paragraph (5) requires that the original property of the claimant be sold within two years of the "purchase or new construction of the replacement dwelling." It further provides

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Thompson
James J. Fawcett

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that the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling. Paragraph (3) of subdivision (g) defines "replacement dwelling" as a building, etc., constituting a place of abode which is owned and occupied by a claimant as his or her principal residence and "any land owned by the claimant on which the building" is situated.

Finally, Revenue and Taxation Code section 67 defines the term "purchase" as meaning a change in ownership for consideration.

Based upon the above provisions, we have interpreted section 69.5 as limiting its benefits to replacement dwellings which are purchased or newly constructed. Since the term "purchase" is defined by section 67 as requiring consideration, a gift cannot qualify as a purchase. Further, since the definition of "replacement dwelling" includes both the structure and the land on which it is situated, it is clear that the "purchase or new construction" requirement applies both to structure and the land. This conclusion is expressly supported by paragraph (5) of subdivision (b) which states that the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the building is located. Thus, we conclude that your replacement dwelling will not qualify for section 69.5 benefits if the land on which the structure is located was not purchased.

It should be recognized that the term "consideration" as used in section 67 is not limited to the payment of cash. Consideration could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Thus, the consideration which would satisfy the requirements of section 67 can take many different forms.

Further, nothing in section 67 states that the consideration be must equal in value to the value of the property transferred. While the transfer of property for nominal value should be rejected on the theory that the alleged "purchase" is a sham, it would appear that the term "purchase" could include a transfer for some substantial consideration even though the amount was less than the full market value of the property received.

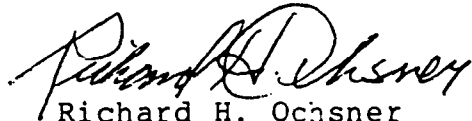
The views expressed herein are advisory only and are not binding upon the assessor of any county. Revenue and Taxation

October 20, 1989

Code section 69.5 contains a number of conditions and it is suggested that you discuss your qualifications for benefits under this section with the assessor in the county in which your intended replacement dwelling is located. The assessor, or his staff, will be able to advise you on whether you can qualify for a Proposition 60 benefit.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard H. Ochsner", is written over the typed name.

Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
2212D

cc: Mr. John W. Hagerty
Mr. Verne Walton

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GRAY DAVIS
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

March 17, 1988

Dear Mr. . . .

This is in response to your letter to Mr. Ochsner of March 1, 1988 in which you request our opinion concerning the applicability of AB 60 to the following facts contained in your letter.

You and your wife are both 61 years old. You inherited a one-half interest in a house and lot in September 1985. You later purchased the other one-half interest in April 1986. You then tore down the existing house and built a new one in its place which was completed in November 1987. In October 1987, you sold your residence of thirty-two years and moved into the newly constructed house. Both homes are located in Los Angeles. The value of the inherited and purchased real property plus the cost of construction of the new house is \$5,000 less than the sale price of the old residence. Based on the foregoing facts, you ask whether the assessed value of the old residence can be transferred to the new residence.

The property tax relief about which you inquire was made possible by Proposition 60 which was adopted by California voters on November 4, 1986. Chapter 186 of the Statutes of 1987 (AB 60) implements Proposition 60 by adding section 69.5 to the Revenue and Taxation Code.*

Section 69.5(a) provides essentially that any person over the age of 55 years who resides in property which is eligible for the homeowners' exemption may transfer subject to specified conditions and limitations, the base year value of that property to any replacement dwelling of equal or lesser value

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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which is located in the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property.

In addition to meeting the requirements of section 69.5(a), section 69.5(b) provides that "any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

* * *

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g) constitutes a part of the replacement dwelling."

Paragraph (3) of subdivision (g) defines "replacement dwelling" to mean "a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence."

Although the question is not completely free of doubt, we have taken the position under the foregoing provisions that if the original property was not sold by the claimant within two years of the purchase of the land upon which the replacement dwelling is built, the claimant is not entitled to any relief under section 69.5.

Unfortunately, that appears to be the case here. Your letter states that in September 1985 you inherited a half-interest in the land upon which the replacement dwelling was built. Since you sold your original property in October 1987, the two-year requirement of section 69.5(b)(5) has not been met. Moreover, section 69.5(b)(5) requires a "purchase" of the land upon which the replacement dwelling is built. "Purchase" for purposes of

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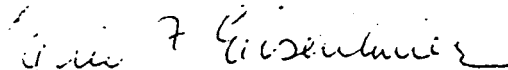
section 69.5 is defined by section 67 to mean "a change in ownership for consideration." That is not the case with inherited property. Accordingly, we are of the opinion that based on the facts provided in your letter, you are not entitled to property tax relief under section 69.5.

We are enclosing for your information a letter from the Board to county assessors dated September 11, 1987 (No. 87/71) as well as Proposition 60 - Questions and Answers which may be helpful in understanding how, in our opinion, section 69.5 is to be applied. Your attention is directed to Question No. 1 of the latter enclosure as it describes a situation closely resembling yours.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If you have further questions regarding this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFF:cb
0952D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton